IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	ORIGINAL
vs.	)	CRIMINAL NO. 4:13-cr-147
	)	
MO HAILONG and MO YUN,	)	
	)	
Defendants.	)	
	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT W. PRATT
Tuesday, December 16, 2014; 3:43 p.m.
DES MOINES, IOWA

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THE COURT: Please be seated. Do you want to open this with putting something on the record about what we need to resolve today, Mr. Weinhardt or Mr. Bird, Mr. Griess?

MR. GRIESS: Thank you, Your Honor. It is my understanding that today is the status conference where we would set a trial date. We would defer to the defendants and their positions and then weigh in on the Court to decide.

THE COURT: From the government's perspective you have documents yet to produce or where are you informally in terms of your discovery?

MR. GRIESS: Your Honor, the discovery has been ongoing for a while now. We have disclosed thousands of pages of discovery. We have the bulk of our discovery obligation. There are some ongoing issues we are attempting to resolve.

There was a Motion to Compel, I know the Court is aware of, filed late yesterday. I think our scheduled date of response is January 2nd. We have spoken with Mr. Weinhardt this morning. We would ask that that be extended to January 9th I think with his agreement and at that point we believe we would have all of the majority of the issues resolved and then we would be able to highlight for the Court the ones that were remaining for the Court to determine.

THE COURT: Mr. Weinhardt or Mr. Bird or Mr. Spies, whoever wants to make the record next may do so.

MR. WEINHARDT: I'd be happy to do so, Your Honor.

THE COURT: Mr. Weinhardt, if it is easy enough, you can remain at counsel table. You don't have to stand. Just talk into the microphone.

MR. WEINHARDT: I will. I don't know how to speak sitting down so --

THE COURT: Okay. Go ahead.

MR. WEINHARDT: Your Honor, we would ask that the case be set for trial starting in early September and working backwards from that. I expect this is going to be a trial that will last several weeks, I don't know exactly what the government anticipates its case in chief will be, but just guessing or from our own understanding of the evidence, we think it is probably a four-week trial for the government and maybe another two to four for the defense depending on --

THE COURT: Just so I can understand, pardon me for interrupting, when you say early September and work backward --

MR. WEINHARDT: Work backward for pretrial deadline and things, but the trial would consume the month of September and much of October if necessary.

THE COURT: A month for the government and two to three weeks for the defendant?

MR. WEINHARDT: I will defer to Mr. Griess and Mr. Krickbaum, but if I were wearing their hat, I don't know how I would get this case in in a lot shorter time. There were several reasons why we believe that the case should be scheduled in that time frame and not sooner.

The first is that there's going to be litigation over the evidence that has been obtained that we are certain the government will seek to introduce under the Foreign Intelligence Surveillance Act. We have sought disclosure of the warrant materials through our Motion to Compel and through earlier formal requests, but there's really more to it than that.

There's a Motion to actually suppress that evidence that we anticipate filing shortly after the first of the year. We have co-counsel who is actually present in court today who has worked with us and has litigated this in a number of districts around the country, we think it is probably a four to six-month track in order to get that case -- to get the FISA litigation resolved because so many different levels of government have to be involved in the litigation, have to make certifications internally about why they are doing what they are doing, prepare and vet their resistance, decide whether or not the resistance is classified, whether or not we get to see it, if we do then we have to go through our own classification procedures to be able to see it and then to prepare a resistance and then the Court's role is two-fold because the Court first has to decide whether or not we get to see the warrant application which the Court does, so that would build in its own delay where we essentially have to rebrief the issues now that we have seen what was presented to the FISA judge or even if not the Court has to make a secondary determination of whether or not there was an adequate showing to the FISA judge to warrant that seizure of -- that surveillance and seizure of information and that in turn requires a number of findings much more complex and intricate than probable cause and will require this Court to go through a laborious process, in other words, someone is going to fly out from Washington with the materials that the Court is going to have to look at and the Court in conjunction with security is going to have to review these materials in order to make, for example, Franks v Delaware types of determinations and things of that sort so we think that is a laborious process that for our clients is going to be an essential part of the defense.

There are a number of other reasons in addition to FISA why we believe that in order to do a competent job of defending Mr. Mo we need a setting of September. The first is the discovery issues in the case and Mr. Griess has made reference to a Response to the Motion to Compel and work for January 9th and a resistance date. We would like to get that Motion set for hearing though, hopefully today, and it would be our request that Your Honor take the Motion to Compel in the first instance rather than go through the Magistrate Judge. We have no concerns obviously about the Magistrate Judge's ability to properly adjudicate the issues here; but the reality is that there are some very difficult legal issues.

To just take one example, the question of whether or not the government is obligated to produce to us information that it obtained from or is still in the hands of the so-called victim companies in this case like Pioneer and Monsanto and Agriline, we contend that the government is obligated to obtain and produce that material to us.

I know that the government and we will never get on the same page about that so this isn't a when are you going to do it question, this is will you ever do it question. I am pretty confident that whoever loses that question in the Magistrate Court is going to appeal to Your Honor and that appeal is going to have to be decided pretrial. We think it would expedite things for Your Honor to take over the Motion to Compel in the first instance so it is our hope that we get a hearing date today; but there are a number of other discovery matters, Your Honor, that we think are undone and need to be done.

For example, a year in we have not had an opportunity to physically inspect any of the seeds, electronic devices, or other physical evidence that is to be introduced in this case nor has there been any expert disclosure or disclosure of scientific information about the highly complex genetic information that is supposed to be the centerpiece of this entire litigation. I am concerned that if we now constrain ourselves to try this case six months from today, that there is going to be insufficient time for us to get the government's expert opinion, analyze the material that we have never seen, and then develop an expert opinion of our own.

There are a number of other conventional search warrants that have been used in this case that we intend to challenge and there is information that we are not even sure of the basis yet so 10 months into the case in October we had disclosed to us what appeared to us to be intercepted phone conversations of our client. We still don't have a warrant application, we don't even know for sure the legal basis upon which those surveillance items were made. Given that level of work left to be done, we can't even start until we have those things produced to us. We are concerned about the amount of time to be able to litigate those things.

Also, many of the pages of documents, Mr. Griess has said thousands of pages of documents, when all electronic information is included, we believe that the number of pages of material for us to process is in the millions, not in the thousands, and we have not received government translations of any of it. We are employing our own translators, but a huge amount of this case is going to be litigated in Mandarin in the first instance and needs to be translated so not only is this voluminous and complex, it is voluminous, complex, and there is a language barrier that the parties need to pierce through in order to prepare adequately to try the case.

I could talk for a lot longer, but I wanted to acquaint the Court with the issues that we think are very challenging about preparing the case for trial. Our client has been essentially confined in home confinement and sort of solitary confinement but for the guards until a recent Order of this Court and so he's as anxious as anybody to get this case tried and his conditions of release, if you want to call them that, have weighed much more heavily on him than on his sister.

Nonetheless, we have conferred with him about what we need to do in order to try this case and while he would like to get this trial going ASAP, he has accepted our advice that we think that we need until September in order to render effective assistance of counsel in order to defend him properly and so that is the schedule we would ask for and then depending on whatever date the Court picks, I think we need to pick dates for Motions, expert disclosure, all that sort of stuff; but I think the -- that is all the tail. The dog is what is the date that we are going to start picking the jury. We think that date should be the end of summer.

THE COURT: Okay. Thank you.

MR. BIRD: Your Honor, I would like to address what we believe are the issues for today's hearing, but I just realized that, in fact, the official translator is not present. Now, my client speaks some English, but given the importance of this hearing for her in particular, getting a trial date set, we are prepared to proceed; but I would just note that we are going to need a court official translator for her. We have had it the last two hearings. I will take responsibility for not having asked that.

THE COURT: I just instant messaged my law clerk. Can we get an interpreter on the phone?

MR. BIRD: I don't think so. The person we had the last two hearings came from Chicago so we will take the transcript, we will read it to her, we will go over it with her. I just mention that so that the Court is aware of it and if there are questions, I will stop and talk to her about that.

Here are the issues which we believe need to be addressed today. Obviously the trial date Mr. Weinhardt has said is the pivotal issue for all of these other issues; but in addition to those there are other important ones.

As for the Discovery Motion that was filed yesterday, we will be joining in that Motion. I will undertake to have our joinder and any additional Motion filed by early next week so that we can be -- we can participate in whatever hearing Your Honor orders for resolution of that Discovery Motion; but with the Court's permission, we would like to have additional -- at least a week in order to file that joinder. Given the fact that Mr. Griess has asked for January 9th to file his response, I don't believe that should be a problem; but that's the second issue.

Discovery cutoff is crucial to our trying -- to all parties trying this case because it is only with a discovery cutoff that we will know with certainty that we have all the discovery which has been promised and ordered in this case and so we are asking the Court today to cut -- to issue an Order implementing a discovery cutoff so that after that point in time the Motions that we will be filing -- we are prepared to file Motions today, Your Honor, except for the fact that we don't know what other discovery is going to be forthcoming from the government and it makes little sense we believe to file those Motions until we know that Mr. Griess has concluded whatever discovery he's ordered and promised to make to us so we need a discovery cutoff.

Motion dates of course will fall from whatever trial date Your Honor orders, but we need the Motion dates. We need to process our evidentiary Motions, the ones that we talked about in our Severance Motion, and our Motions in Limine and any other Motions that are necessary.

An expert disclosure date. Mr. Weinhardt mentioned that we think that is absolutely essential. There will be crucial expert testimony in this case, including the testimony of Chinese translators because Mr. Weinhardt is exactly right, we are going to have a number of significant disputes about the government's interpretation of Mandarin characters that embody the bulk of crucial excerpts, these cut and paste excerpts that we have been talking about on and off.

In addition, we understand that there may be witnesses come in from the seed companies. Now, we are all familiar with percipient experts, but a lot of those people are going to be presented to the jury as if they are experts. We want to know what experts they are going to call in. Your Honor said in your Severance Order they don't have to prove trade secrets were stolen, we think they are going to try to prove that anyway, and we want to know who their expert witnesses are going to be and we are respectfully asking that the Court set a date by which we are told who those experts are and of course I am sure that will apply to us as well.

Subpoena date. A crucial issue for us. We intend to subpoena third-party witnesses and given the importance of setting a trial date and sticking to it for our client and for Mr. Weinhardt's client, we are going to ask the Court to provide an early return date because we anticipate that there will be significant litigation concerning the subpoenas that we will serve on third-party witnesses so let's get to it, let's have an early return date. We believe there's authority for that, especially under Rule 17(c), and we are going to ask the Court to set an early return date.

I am going to suggest January 30th. We will get the subpoenas that we are going to issue issued in the next couple weeks if necessary and then the Motions to Quash, we will be litigating that for some time, but we are going to ask the Court to set an early return date so we can get to that and not have to deal with that on the eve of trial.

If, in fact, the Court does set, as has been requested, a September trial date instead of the May trial date which we are asking for, then we will be revisiting some of the -- our Bail Motion that was denied by the Magistrate Judge in this case. Whether we do that through the Magistrate Judge, we would prefer to do it through Your Honor because we think ultimately as Mr. Weinhardt suggested as to some of these other Motions, that Your Honor is going to have to resolve that and, in fact, we'd like to discuss potential bail considerations because if we go to trial in September, our client, while not in formal custody, will have been separated from her family, her two small children, and an ailing father and mother for well over 15 years -- I mean, 15 months, sorry, Your Honor, July to -- July up to September. That's too long. And there's nothing that -- some of those people can't travel to this country.

The children went through a traumatic separation from their mother. It has been decided by the family that as of now in any event that they should not come to this country. It is only going to prolong and intensify the separation problems that already exist as far as those children are concerned.

Now, let me talk about -- if Your Honor wishes, I can get into the May date that we are asking. My client is an innocent woman. She has been charged legally wrongly in this conspiracy. She has been in jail or in custody or essentially separated from her family now since July. Even if we go to trial in May, she will have been separated from her two small children for almost a year. We want to go to trial as soon as possible, reasonably possible.

Now, we understand and she understands that there are certain Motions that have to be filed, certain steps that have to be taken. We believe those steps can be taken as to our client and we can get this -- if we get a firm discovery cutoff so the government knows that it has to provide the discovery that it has promised and that it is required to produce by a date certain and I am going to suggest, Your Honor, that that date certain could be as early as the end of February because we've got a Discovery Motion now that will probably be tried by the end of January, just projecting now, and then 30 days after that discovery cutoff so that the government has sufficient time to provide whatever the Court orders it provide, we've got a discovery cutoff at the end of February and we can file our Motions, whatever evidentiary Motions we have, whatever Motions in Limine need to be filed, whatever other Motions need to be filed can be filed within a date certain from the end of February, we could have that hearing within about a month and a half, gets us into the middle of April, middle of April, and then we can have our trial in May. I think that's a reasonable schedule, I believe the government can meet that schedule, and with the Court's help we can all meet that schedule.

Our situation, our circumstances differ from Mo Hailong. We have to balance the speedy trial rights that we have, the deep-felt and genuine concern that my client has about being with her family, her children, her father who is suffering from throat cancer, and a mother with high blood pressure, she wants to be with them and we are not going to pursue -- if we can get a May trial date, we will not pursue the FISA, the Motions and objections that Mr. Weinhardt has discussed. It is that important for us to get to trial. I think that's a reasonable schedule and I think it is reasonable for the government and for us.

THE COURT: All right.

MR. BIRD: Thank you, Your Honor.

MR. GRIESS: Thank you, Your Honor. First of all, I think Mr. Weinhardt is correct. We are looking at 30 days to present the government's case in any event. Mr. Weinhardt to a degree I think summarized and we have summarized it previously as well as part of our resistance to the Motion to Sever the process that will need to be taking place with regard to FISA evidence in this case. We believe that can be accomplished in 90 days, although that would be a very aggressive and quick schedule. We believe it can be done. We think that September trial setting would be appropriate, but we also recognize that Ms. Yun's interests differ and we would be amenable to a trial date either mid May or September or anywhere in between the Court wishes to set the case for trial.

We are not averse to setting deadlines. I would ask Your Honor with regard to discovery deadlines that those be scheduled during the hearing on the Motion to Compel. We don't oppose the Court or ask the Court to go ahead and set a hearing for that today, but we would ask that those specific dates be set at that point in time. Again, we are willing and able to go as quickly as possible to get this matter to trial and are willing to go to trial anywhere between mid May and September.

THE COURT: Let me mention a couple of things. My recollection from the Indictment and my reading is that the alleged victims in this case are Monsanto, DuPont, slash, Pioneer, and there's an Agriline Company from Indiana.

MR. BIRD: LGC, Your Honor.

THE COURT: Mr. Weinhardt raised this. It seems to me -- I mean, do they have material that they won't turn over to the government? Mr. Weinhardt said we don't even know who has that material. What is the status of that? It seems to me we ought to be able to resolve that today.

MR. GRIESS: Your Honor, we would ask to brief that. That is going to be an issue of contention. We have turned over a tremendous amount of that discovery already. What is left to be turned over and specifically what they want, I think that needs to be presented to the Court formally.

THE COURT: Here is what I am going to have you do. Other than the trial date, I can come up with that; but these requests, you are going to have to make written -- you are going to have to make suggested written deadlines for me on discovery, on expert disclosure, on subpoena dates, I mean, otherwise I am going to be -- you know more about this case obviously than I do, but you have to come up with some suggested deadlines in writing unless you can agree on something more than the September trial date I guess. Otherwise you are not going to like my dates. Okay?

Is there anything else because if there isn't, I have a matter that I need to talk with you lawyers about out of the presence of everybody else. Why don't you come over here to the side bar.

(An off-the-record discussion was held.)

THE COURT: Okay. The record should show we had a discussion, but it was about a private matter of the Court. It didn't concern anything about the evidence or deadlines or anything of public interest in this matter. Okay. Anything else we should put on this record with regard for defendants?

MR. GRIESS: No, Your Honor.

MR. BIRD: No, Your Honor.

THE COURT: We will be in recess.

(Proceedings concluded at 4:09 p.m., December 16, 2014.)

CERTIFICATE OF OFFICIAL REPORTER

I, Linda Faurote-Egbers, Federal Official Realtime Court Reporter, in and for the United States District Court for the Southern District of Iowa, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 30th day of December, 2014.

/s/ Linda Faurote-Egbers
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